#### 48-1-.5. Scope of chapter.

Until this chapter is repealed January 1, 2016, this chapter applies only to a partnership formed on or before December 31, 2013, that has not elected to be governed by Chapter 1d, Utah Uniform Partnership Act, as provided in Section 48-1d-1405.

Enacted by Chapter 412, 2013 General Session

#### 48-1-1. Definition of terms.

As used in this chapter:

- (1) "Bankrupt" includes "bankrupt" under the federal bankruptcy laws or "insolvent" under any state insolvency law.
  - (2) "Business" includes every trade, occupation, or profession.
  - (3) "Conveyance" includes every assignment, lease, mortgage, or encumbrance.
  - (4) "Court" includes every court and judge having jurisdiction in the case.
  - (5) "Limited liability partnership" means a general partnership:
  - (a) registered under Section 48-1-42; and
  - (b) complying with Section 48-1-43.
  - (6) "Person" includes:
  - (a) an individual;
  - (b) a partnership;
  - (c) a limited liability company;
  - (d) a limited liability partnership;
  - (e) a corporation; or
  - (f) another association.
  - (7) "Real property" includes land and any interest or estate in land.
- (8) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.
  - (9) "Tribal limited liability partnership" means a limited liability partnership:
  - (a) formed under the law of a tribe; and
  - (b) that is at least 51% owned or controlled by the tribe.

Amended by Chapter 249, 2008 General Session

## 48-1-2. Interpretation of knowledge and notice.

- (1) Within the meaning of this chapter, a person is deemed to have knowledge of a fact not only when he has actual knowledge thereof, but also when he has knowledge of such other facts that to act in disregard of them shows bad faith.
- (2) A person has notice of a fact within the meaning of this chapter when the person who claims the benefit of the notice:
  - (a) states the fact to such person; or
- (b) delivers through the mail, or by other means of communication, a written statement of the fact to such person, or to a proper person at his place of business or residence.

## 48-1-3. "Partnership" defined.

- (1) (a) Except as provided in Subsection (2), a "partnership" is an association of two or more persons to carry on as coowners a business for profit.
- (b) "Partnership," when used in a statute of the state, includes a limited liability partnership registered under Section 48-1-42, unless the context requires otherwise.
- (2) An association formed under any other statute of this state, or any statute adopted by authority other than the authority of this state, is not a partnership under this chapter, unless such association would have been a partnership in this state prior to the adoption of this chapter.
- (3) This chapter shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith.

Amended by Chapter 340, 2011 General Session

#### 48-1-3.1. Joint venture defined -- Application of chapter.

- (1) A joint venture is an association of two or more persons to carry on as co-owners of a single business enterprise.
  - (2) This chapter governs the property and transfer rights of joint ventures.

Enacted by Chapter 14, 1985 General Session

## 48-1-4. Rules for determining the existence of a partnership.

In determining whether a partnership exists these rules shall apply:

- (1) Except as provided by Section 48-1-13, persons who are not partners as to each other are not partners as to third persons.
- (2) Joint tenancy, tenancy in common, tenancy by entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.
- (3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.
- (4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:
  - (a) As a debt by installments or otherwise.
  - (b) As wages of an employee or rent to a landlord.
  - (c) As an annuity to a widow or representative of a deceased partner.
- (d) As interest on a loan, though the amounts of payment vary with the profits of the business.
- (e) As the consideration for the sale of the good will of a business or other property by installments or otherwise.

No Change Since 1953

#### 48-1-5. Partnership property.

All property originally brought into the partnership stock, or subsequently acquired by purchase or otherwise on account of the partnership, is partnership property.

Unless the contrary intention appears, property acquired with partnership funds is partnership property.

Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor, unless a contrary intent appears.

No Change Since 1953

#### 48-1-6. Partner agent of partnership as to partnership business.

- (1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument for apparently carrying on in the usual way the business of the partnership of which he is a member, binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter and the person with whom he is dealing has knowledge of the fact that he has no such authority.
- (2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership, unless authorized by the other partners.
- (3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all of the partners have no authority to:
- (a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership.
  - (b) Dispose of the good will of the business.
- (c) Do any other act which would make it impossible to carry on the ordinary business of the partnership.
  - (d) Confess a judgment.
  - (e) Submit a partnership claim or liability to arbitration or reference.
- (4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

No Change Since 1953

#### 48-1-7. Conveyance of real property of partnership.

Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property, unless the partner's act binds the partnership under the provisions of Section 48-1-6(1), or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner in making the conveyance has exceeded his authority.

Where title to real property is in the name of the partnership a conveyance executed by a partner in his own name passes the equitable interest of the partnership.

provided the act is one within the authority of the partner under the provisions of Section 48-1-6(1).

Where title to real property is in the name of one or more but not all of the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property, if the partners' act does not bind the partnership under the provisions of Section 48-1-6(1), unless the purchaser or his assignee is a holder for value without knowledge.

Where the title to real property is in the name of one or more or all of the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of Section 48-1-6(1).

Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

No Change Since 1953

#### 48-1-8. Partnership bound by admission of partner.

An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership.

No Change Since 1953

#### 48-1-9. Partnership charged with knowledge of or notice to partner.

Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operates as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

No Change Since 1953

#### 48-1-10. Partnership bound by partner's wrongful act.

Where by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

No Change Since 1953

#### 48-1-11. Partnership bound by partner's breach of trust.

The partnership is bound to make good the loss:

- (1) where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and,
- (2) where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

No Change Since 1953

#### 48-1-12. Nature of partner's liability.

- (1) Except as provided in Subsection (2), all partners are liable:
- (a) jointly and severally for everything chargeable to the partnership under Sections 48-1-10 and 48-1-11.
- (b) jointly for all other debts and obligations of the partnership, except a partner may enter into a separate obligation to perform a partnership contract.
- (2) (a) A partner in a limited liability partnership is not liable, directly or indirectly, including by way of indemnification, contribution or otherwise, for a debt, obligation, or liability chargeable to the partnership arising from negligence, wrongful acts, or misconduct committed while the partnership is registered as a limited liability partnership and in the course of the partnership business by another partner, or an employee, agent, or representative of the limited liability partnership.
- (b) Notwithstanding Subsection (2)(a), a partner in a limited liability partnership is liable for his own negligence, wrongful acts, or misconduct.

Amended by Chapter 61, 1994 General Session

## 48-1-13. Partner by estoppel.

- (1) When a person by words spoken or written or by conduct represents himself, or consents to another's representing him, to anyone as a partner, in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made who has on the faith of such representation given credit to the actual or apparent partnership, and, if he has made such representation or consented to its being made in a public manner, he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by, or with the knowledge of, the apparent partner making the representation or consenting to its being made.
- (a) When a partnership liability results, he is liable as if he were an actual member of the partnership.
- (b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability; otherwise, separately.
- (2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of an existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the

joint act or obligation of the person acting and the persons consenting to the representation.

No Change Since 1953

## 48-1-14. Liability of incoming partner.

A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as if he had been a partner when such obligations were incurred, except that his liability shall be satisfied only out of partnership property.

No Change Since 1953

#### 48-1-15. Rules determining rights and duties of partners.

The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

- (1) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property, and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and, except as provided in Subsection 48-1-12(2), must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.
- (2) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.
- (3) A partner who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute shall be paid interest from the date of the payment or advance.
- (4) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.
- (5) All partners have equal rights in the management and conduct of the partnership business.
- (6) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.
- (7) No person can become a member of a partnership without the consent of all the partners.
- (8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

Amended by Chapter 61, 1994 General Session

#### 48-1-16. Partnership books.

The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at

all times have access to and may inspect and copy any of them.

No Change Since 1953

## 48-1-17. Duty of partners to render information.

Partners shall render on demand true and full information of all things affecting the partnership to any partner, or the legal representatives of any deceased partner, or partner under legal disability.

No Change Since 1953

#### 48-1-18. Partner accountable as a fiduciary.

Every partner must account to the partnership for any benefit, and hold as trustee for it any profits, derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnership or from any use by him of its property.

This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

No Change Since 1953

#### 48-1-19. Right to an account.

Any partner shall have the right to a formal account as to partnership affairs:

- (1) If he is wrongfully excluded from the partnership business or possession of its property by his copartners.
  - (2) If the right exists under the terms of any agreement.
  - (3) As provided by Section 48-1-18.
  - (4) Whenever other circumstances render it just and reasonable.

No Change Since 1953

#### 48-1-20. Continuation of partnership beyond fixed term.

When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination so far as is consistent with a partnership at will.

A continuation of the business by the partners, or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership.

No Change Since 1953

#### 48-1-21. Extent of property rights of a partner.

The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership and (3) his right to participate in the management.

## 48-1-22. Nature of a partner's right in specific partnership property.

- (1) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.
  - (2) The incidents of this tenancy are such that:
- (a) A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.
- (b) A partner's right in specific partnership property is not assignable, except in connection with the assignment of rights of all the partners in the same property.
- (c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt, the partners, or any of them, or the representative of a deceased partner, cannot claim any right under the homestead or exemption laws.
- (d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representatives. Such surviving partner or partners, or the legal representatives of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.
- (e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs or next of kin.

No Change Since 1953

#### 48-1-23. Nature of partner's interest in the partnership.

A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

No Change Since 1953

## 48-1-24. Assignment of partner's interest.

A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, or, as against the other partners in the absence of agreement, entitle the assignee during the continuance of the partnership to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

In case of a dissolution of a partnership, the assignee is entitled to receive his assignor's interest, and may require an account from the date only of the last account agreed to by all the partners.

#### 48-1-25. Partner's interest subject to charging order.

- (1) On due application to a competent court by any judgment creditor of a partner the court which entered the judgment, order or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon and may then or later appoint a receiver of his share of the profits and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made or which the circumstances of the case may require.
- (2) The interest charged may be redeemed at any time before foreclosure, or, in case of a sale being directed by the court, may be purchased without thereby causing a dissolution:
  - (a) with separate property, by any one or more of the partners; or,
- (b) with partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.
- (3) Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws as regards his interest in the partnership.

No Change Since 1953

#### 48-1-26. "Dissolution" defined.

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on, as distinguished from the winding up, of the business.

No Change Since 1953

## 48-1-27. Partnership not terminated by dissolution.

On dissolution a partnership is not terminated, but continues until the winding up of partnership affairs is completed.

No Change Since 1953

#### 48-1-28. Causes of dissolution.

Dissolution is caused:

- (1) Without violation of the agreement between the partners:
- (a) By the termination of the definite term or particular undertaking specified in the agreement.
- (b) By the express will of any partner when no definite term or particular undertaking is specified.
- (c) By the express will of all the partners who have not assigned their interests, or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking.
- (d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners.
- (2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by

the express will of any partner at any time.

- (3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership.
  - (4) By the death of any partner.
  - (5) By the bankruptcy of any partner or the partnership.
  - (6) By decree of court under Section 48-1-29.

No Change Since 1953

#### 48-1-29. Dissolution by decree of court.

- (1) On application by or for a partner the court shall decree a dissolution whenever:
- (a) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind.
- (b) A partner becomes in any other way incapable of performing his part of the partnership contract.
- (c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business.
- (d) A partner willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him.
  - (e) The business of the partnership can only be carried on at a loss.
  - (f) Other circumstances render a dissolution equitable.
- (2) On the application of the purchaser of a partner's interest under Section 48-1-24 or 48-1-25:
  - (a) After the termination of the specified term or particular undertaking.
- (b) At any time, if the partnership was a partnership at will, when the interest was assigned or when the charging order was issued.

No Change Since 1953

#### 48-1-30. General effect of dissolution on authority of partner.

Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership.

- (1) With respect to the partners:
- (a) when the dissolution is not by the act, bankruptcy or death of a partner; or
- (b) when the dissolution is by such act, bankruptcy or death of a partner in cases where Section 48-1-31 so requires.
  - (2) With respect to persons not partners as declared in Section 48-1-32.

No Change Since 1953

48-1-31. Right of partner to contribution from copartners after dissolution.

Where the dissolution is caused by the act, death, or bankruptcy of a partner

each partner is liable to his copartners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

- (1) the dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution;
- (2) the dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy; or
- (3) the liability is for a debt, obligation, or liability for which the partner is not liable under Subsection 48-1-12(2).

Amended by Chapter 61, 1994 General Session

## 48-1-32. Power of partner to bind partnership to third persons after dissolution.

- (1) After dissolution a partner can bind the partnership, except as provided in paragraph (3):
- (a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution.
- (b) By any transaction which would bind the partnership, if dissolution had not taken place, provided the other party to the transaction:
- (i) had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or
- (ii) though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place, if more than one) at which the partnership business was regularly carried on.
- (2) The liability of a partner under paragraph (1)(b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:
  - (a) unknown as a partner to the person with whom the contract is made; and
- (b) so far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.
  - (3) The partnership is in no case bound by any act of a partner after dissolution:
- (a) where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or
  - (b) where the partner has become bankrupt; or
- (c) where the partner has no authority to wind up partnership affairs; except by a transaction with one who:
- (i) had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or
- (ii) had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in paragraph (1)(b)(ii).
- (4) Nothing in this section shall affect the liability under Section 48-1-13 of any person who after dissolution represents himself or consents to another's representing

him as a partner in a partnership engaged in carrying on business.

No Change Since 1953

#### 48-1-33. Effect of dissolution on partner's existing liability.

- (1) The dissolution of a partnership does not of itself discharge the existing liability of any partner.
- (2) A partner is discharged for any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.
- (3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.
- (4) The individual property of a deceased partner shall be liable for those obligations of the partnership incurred while he was a partner and for which the partner was liable under Section 48-1-12, but subject to the prior payment of his separate debts.

Amended by Chapter 61, 1994 General Session

## 48-1-34. Right to wind up.

Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representatives of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided, however, that any partner, his legal representatives or his assignee upon cause shown may obtain a winding up by the court.

No Change Since 1953

## 48-1-35. Rights of partners to application of partnership property.

- (1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement, and if the expelled partner is discharged from all partnership liabilities either by payment or agreement under Section 48-1-33(2), he shall receive in cash only the net amount due him from the partnership.
- (2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:
  - (a) Each partner who has not caused dissolution wrongfully shall have:
  - (i) all the rights specified in paragraph (1) of this section; and

- (ii) the right as against each partner who has caused the dissolution wrongfully to damages for breach of the agreement.
- (b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so during the agreed term for the partnership, and for that purpose may possess the partnership property; provided, they pay to any partner who has caused the dissolution wrongfully the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2)(a)(ii) of this section or secure the payment by bond approved by the court, and in like manner indemnify him against all present or future partnership liabilities.
  - (c) A partner who has caused the dissolution wrongfully shall have:
- (i) If the business is not continued under the provisions of paragraph (2)(b), all the rights of a partner under paragraph (1), subject to clause (2)(a)(ii) of this section.
- (ii) If the business is continued under paragraph (2)(b) of this section, the right as against his copartners, and all claiming through them, in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good will of the business shall not be considered.

No Change Since 1953

# 48-1-36. Rights where partnership is dissolved for fraud or misrepresentation.

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled:

- (1) to a lien on, or right of retention of, the surplus of the partnership property, after satisfying the partnership liabilities to third persons, for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and,
- (2) to stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and,
- (3) to be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

No Change Since 1953

#### 48-1-37. Rules for distribution.

In settling accounts between the partners after dissolution the following rules shall be observed, subject to any agreement to the contrary:

- (1) The assets of the partnership are:
- (a) partnership property; and
- (b) contributions of the partners specified in Subsection (4).

- (2) The liabilities of the partnership shall rank in order of payment, as follows:
- (a) those owing to creditors other than partners;
- (b) those owing to partners other than for capital and profits;
- (c) those owing to partners in respect of capital; and
- (d) those owing to partners in respect of profits.
- (3) The assets shall be applied in the order of their declaration in Subsection (1) to the satisfaction of the liabilities.
- (4) Except as provided in Subsection 48-1-12(2), the partners shall contribute as provided by Subsection 48-1-15(1) the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and in the relative proportions in which they share the profits the additional amount necessary to pay the liabilities.
- (5) An assignee for the benefit of creditors, or any person appointed by the court, shall have the right to enforce the contributions specified in Subsection (4).
- (6) Any partner or his legal representative shall have the right to enforce the contributions specified in Subsection (4) to the extent of the amount that he has paid in excess of his share of the liability.
- (7) The individual property of a deceased partner shall be liable for the contributions specified in Subsection (4).
- (8) When partnership property and the individual properties of the partners are in the possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.
- (9) When a partner has become bankrupt or his estate is insolvent, the claims against his separate property shall rank in the following order:
  - (a) those owing to separate creditors;
  - (b) those owing to partnership creditors; and
  - (c) those owing to partners by way of contribution.

Amended by Chapter 61, 1994 General Session

#### 48-1-38. Liability of persons continuing the business in certain cases.

- (1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representatives of a deceased partner assign) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first, or dissolved, partnership are also creditors of the partnership so continuing the business.
- (2) When all but one partner retire and assign (or the representatives of a deceased partner assign) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.
- (3) When any partner retires or dies and the business of the dissolved partnership is continued, as set forth in paragraphs (1) and (2) of this section, with the

consent of the retired partner or the representatives of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of creditors of the person or partnership continuing the business shall be as if such assignment had been made.

- (4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.
- (5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of Section 48-1-35(2)(b), either alone or with others and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.
- (6) When a partner is expelled and the remaining partners continue the business, either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.
- (7) The liability of a third person becoming a partner in the partnership continuing the business under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.
- (8) When the business of a partnership after dissolution is continued under any conditions set forth in this section, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representatives of the deceased partner, have a prior right to any claim of the retired partner or the representatives of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership, or on account of any consideration promised for such interest, or for his right in partnership property.
- (9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.
- (10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

No Change Since 1953

## 48-1-39. Rights of retiring or estate of deceased partner when the business is continued.

When any partner retires or dies and the business is continued under any of the conditions set forth in Section 48-1-38(1), (2), (3), (5), (6), or Section 48-1-35(2)(b) without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representatives as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest,

or, at his option or at the option of his legal representatives, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided, that the creditors of the dissolved partnership as against the separate creditors or the representative of the retired or deceased partner shall have priority on any claim arising under this section, as provided by Section 48-1-38(8).

No Change Since 1953

#### 48-1-40. Accrual of actions.

The right to an account of his interest shall accrue to any partner or his legal representative as against the winding-up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution in the absence of any agreement to the contrary.

No Change Since 1953

#### 48-1-41. Title.

Sections 48-1-41 through 48-1-48 are known as the "Utah Limited Liability Partnership Act."

Enacted by Chapter 61, 1994 General Session

#### 48-1-42. Registration of limited liability partnerships.

- (1) (a) A partnership shall register with the Division of Corporations and Commercial Code by filing an application or a renewal statement:
  - (i) to become and to continue as a limited liability partnership; or
  - (ii) to do business in this state as a foreign limited liability partnership.
  - (b) The application or renewal statement shall include:
  - (i) the name of the limited liability partnership;
  - (ii) the information required by Subsection 16-17-203(1);
  - (iii) the number of partners;
- (iv) a brief statement of the business in which the limited liability partnership engages;
- (v) a brief statement that the partnership is applying for, or seeking to renew its status as a limited liability partnership; and
- (vi) if a foreign limited liability partnership, an original certificate of fact or good standing from the office of the lieutenant governor or other responsible authority of the state in which the limited liability partnership is formed.
- (2) The application or renewal statement required by Subsection (1) shall be executed by a majority in voting interest of the partners or by one or more partners authorized by the partnership to execute an application or renewal statement.
- (3) The application or renewal statement shall be accompanied by a filing fee established under Section 63J-1-504.
- (4) The division shall register as a limited liability partnership any partnership that submits a completed application with the required fee.
  - (5) (a) The registration expires one year after the date an application is filed

unless the registration is voluntarily withdrawn by filing with the division a written withdrawal notice executed by a majority in voting interest of the partners or by one or more partners authorized to execute a withdrawal notice.

- (b) Registration of a partnership as a limited liability partnership shall be renewed if no earlier than 60 days before the date the registration expires and no later than the date of expiration, the limited liability partnership files with the division a renewal statement.
- (c) The division shall renew the registration as a limited liability partnership of any limited liability partnership that timely submits a completed renewal statement with the required fee.
- (d) If a renewal statement is timely filed, the registration is effective for one year after the date the registration would have expired but for the filing or the renewal statement.
- (6) The status of a partnership as a limited liability partnership is not affected by changes in the information stated in the application or renewal statement which take place after the filing of an application or a renewal statement.
- (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may issue rules providing for the form content and submittal of applications for registration or of renewal statements.

Amended by Chapter 183, 2009 General Session

## 48-1-43. Scope of chapter -- Choice of law.

- (1) A partnership, including a limited liability partnership may conduct its business, carry on its operations, and exercise the powers granted by this chapter within and without the state.
- (2) (a) It is the intent of the Legislature that the legal existence of limited liability partnerships formed in this state and registered under Section 48-1-42 be recognized outside the boundaries of this state and that the laws of this state governing the limited liability partnership transacting business outside this state be granted the protection of full faith and credit under the Constitution of the United States.
- (b) It is the intent of the Legislature that the internal affairs of a limited liability partnerships formed in this state and registered under Section 48-1-42 be subject to and governed by the laws of this state, including the provisions providing for liability of partners for debts, obligations, and liabilities chargeable to partnerships.

Enacted by Chapter 61, 1994 General Session

## 48-1-44. Foreign limited liability partnerships.

- (1) Subject to any statute regulating a specific type of business, a limited liability partnership registered and existing under the laws of another state, may do business in this state if it registers with the division in accordance with Section 48-1-42.
- (2) The internal affairs of a limited liability partnership registered and existing under the laws of another jurisdiction is subject to and governed by the laws of the state where the partnership is formed, including the provisions providing for the liability of partners for debts, obligations of, and liabilities chargeable to a partnership.

- (3) (a) The division may permit a tribal limited liability partnership to register with the division in the same manner as a foreign limited liability partnership formed in another state.
- (b) If a tribal limited liability partnership elects to register with the division, for purposes of this chapter, the tribal limited liability partnership shall be treated in the same manner as a foreign limited liability partnership formed under the laws of another state.

Amended by Chapter 249, 2008 General Session

#### 48-1-45. Name of registered limited liability partnership.

The name of a limited liability partnership shall contain the words "limited liability partnership" or the abbreviations "L.L.P." or "LLP" as the last words or letters of its name.

Enacted by Chapter 61, 1994 General Session

#### 48-1-46. Professional relationship -- Personal liability.

- (1) Sections 48-1-41 through 48-1-48 do not alter any law applicable to the relationship between a person rendering professional services and a person receiving those services, including liability arising out of those professional services. All persons rendering professional services shall remain personally liable for any results of that person's acts or omissions.
- (2) No partner or employee of a limited liability partnership is personally liable for the acts or omissions of any other partner or employee of the limited liability partnership.

Enacted by Chapter 61, 1994 General Session

# 48-1-47. Regulatory agency or board authority -- Prohibitions on individuals apply.

- (1) Sections 48-1-41 through 48-1-48 do not restrict or limit the authority and duty of any appropriate regulatory agency or board to license individual persons rendering professional services or the practice of the profession that is within the jurisdiction of the regulatory agency or board, notwithstanding that the person is a partner or employee of a limited liability partnership and rendering the professional services or engaging in the practice of the profession through the limited liability partnership.
- (2) No limited liability partnership may do anything that is prohibited to be done by an individual licensed to practice the profession that the limited liability partnership is organized to render.

Enacted by Chapter 61, 1994 General Session

#### 48-1-48. Limited liability partnerships providing professional services.

(1) A limited liability partnership organized under Sections 48-1-41 through

- 48-1-48 to render professional services may render only one specific type of professional service, and services ancillary to that type of professional service, and may not engage in any business other than rendering the professional service that it was organized to render and services ancillary to those services.
  - (2) A limited liability partnership organized to render professional services:
- (a) may include partners and employees authorized under the laws of the jurisdiction where they reside to provide similar services;
- (b) may include partners who are not licensed or registered by the state to render those professional services to the extent allowed by the applicable licensing act relating to those professional services; and
- (c) may render professional services in Utah only through its partners and employees who are licensed or registered by the state to render those professional services.
- (3) A limited liability partnership organized to render professional services shall have the powers provided a limited liability partnership under this chapter.

Amended by Chapter 261, 2000 General Session